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Reconciliation, Accountability and International Human Rights in Sri Lanka

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Post-2015, Sri Lanka has engaged actively and widely on transitional justice, with international actors. This international engagement, however, has not been accompanied by domestic progress and broad public engagement on issues of reconciliation and accountability. Both the government and civil society have over-invested in ‘international’ engagement at the expense of the ‘local’ engagement, thereby losing an opportunity for sustained trust-building, accountability and institutional reform.

This LKI Policy Brief is one of a series of papers originating from LKI’s Sri Lanka Foreign Policy Forum in 2017.

I. Introduction

Sri Lanka’s post-2015 experience of reconciliation, accountability, and human rights is a study of stark contrasts—of international engagement and local disengagement, perceptions of the North and the East vis-à-vis those of the South, and elation and disillusionment. This paper traces conceptual, systemic, and practical barriers to reconciliation, accountability, and human rights in Sri Lanka, and calls for an about-turn in the nature of local engagement, to avert the risks of continuing the status quo and losing an opportunity for change.

II. Human Rights: The International Context and Critiques

This is a strange time for human rights on the global stage. On one level, human rights are well-entrenched with their substantial integration into the United Nations (UN) system. The UN has established the administrative infrastructure for human rights monitoring. This infrastructure takes the form of the Office of the High Commissioner for Human Rights, with [four charter-based bodies](#)—including the UN Human Rights Council and the Universal Periodic Review Working Group—and [ten treaty-based bodies](#), which are mandated with monitoring countries’ compliance with commitments to each treaty.

Conceptual Critiques

On another level, however, the idea that informs the liberal philosophy underlying human rights—one of a rights-bearing, abstracted individual who is not embedded in any context or in any relationships—has long been severely critiqued in academic discussions. The way in which the discourse on rights somehow emboldens statehood and the sovereignty of states, through the emphasis on the state as the entity through which rights are ensured, has also been critiqued.

Moreover, theorists such as Wendy Brown have been asking questions about the manner in which human rights discourse presents itself as being an ethical project, above and beyond politics, while engaging in a form of politics supportive of a prevailing global status quo. As [Brown states of the rights discourse](#),

It is a politics and it organises political space, often with the aim of monopolising it. It also stands as a critique of dissonant political projects, converges neatly with the requisites of liberal imperialism and global free trade, and legitimates both as well.

There have been a variety of more recent critiques as well, which push the theoretical and historical critique of the framework further.

'Practical' Critiques

Although human rights enjoyed its greatest normative successes in the 1990s, developments in global politics since 11th September 2001 have seriously eroded the normative definition of human rights. The statement by Human Rights Watch "[Ten Years After September 11th](#)" describes the impact of post 9-11 counterterrorism actions on human rights around the world. Some measures that it mentions are now synonymous with a blatant disregard for human rights, including Guantanamo, military commissions, CIA 'black sites,' water-boarding, and other 'enhanced interrogation techniques,' extraordinary rendition to torture covered up by meaningless 'diplomatic assurances.'

According to Human Rights Watch,

Those who deployed them lost the moral high ground, undermined trust in law-enforcement officials, and discarded lawful techniques for piercing secretive criminal enterprises that had long proved effective. They also bred copycat responses by governments whose interest was less stopping terrorism than using the latest rhetoric of convenience to silence political opposition.

Overbroad and vague anti-terrorism laws proliferated. Peaceful dissidents were labelled terrorists and detained without trial. Torture and arbitrary detention became harder to combat because "that's what Bush did." Many governments best placed to reverse these damaging trends were silenced by their own complicity in them – and by their tendency to welcome virtually anything said to be done in the name of fighting terrorism.

The statement by Human Rights Watch also notes that while many cases of abuse during that period related to counter-terrorism measures were stopped, governments have been slow to prosecute the offending officials. According to Human Rights Watch, "This failure to uphold the rule of law risks transforming torture and other serious human rights violations from blatant criminal offences to permissible policy options."

III. Sri Lanka and the UNHRC: A Promising Start

Sri Lanka's community of activists, of which I too am a part, remain heavily invested in the human rights discourse and international human rights instruments, and are committed to international processes that are designed to hold governments accountable to their UN treaty commitments. I would like to suggest that this investment is not because we are unaware that the process is flawed, but in recognition that these limited processes still hold the strategic possibility of bringing about change.

The success of those processes in achieving certain short-term goals cannot be dismissed. One such success was the manner in which international pressure was brought to bear upon the Rajapaksa regime in the aftermath of the anti-Muslim violence in the town of Aluthgama. The international condemnation of that event included a [statement](#) by Navaneetham Pillai, then UN High Commissioner for Human Rights. This resulted in the unprecedented move by the regime of reconstructing the damaged and destroyed buildings via labour from the armed forces and a promise of further compensation for the victims.

Regardless of these successes, however, it is also worth asking if there is too much activist energy being expended on these processes, to the detriment of other possible strategies. On 1st October 2015, during the 40th session of the UN Human Rights Council (UNHRC), the UNHRC adopted its [Resolution 30\(1\)](#), which was co-sponsored by the Governments of the United States and Sri Lanka. In that Resolution, the Government of Sri Lanka committed to establishing four reconciliation mechanisms. These [mechanisms](#) include "a commission for truth, justice, reconciliation and non-recurrence, an office of missing persons and an office for reparations," and "a judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law."

Resolution 30(1) was drafted in the wake of the euphoric sense of change after Sri Lanka's Presidential elections of January 2015, in which President Maithripala Sirisena defeated the incumbent Mahinda Rajapaksa. This was an election that many Sri Lanka's citizens believe that they personally influenced. Civil society activists and members of the country's different Muslim communities feel that it was their activism and commitment that brought about the change. In that euphoric first year after the election, it seemed like anything was possible. At the time of the drafting of Resolution 30(1), it was as if the human rights activists' maximalist vision of reconciliation, accountability reparations, and truth-seeking was being endorsed by the country's newly-elected political elites as well.

The state's public consultations, towards both the UNHRC-mediated transitional justice process and the constitutional reform processes, were also applauded as steps in the right direction of greater democracy, which was what the new regime promised. These consultation processes were part of what was agreed in Resolution 30/1. Both processes were painstakingly carried out by civil society activists recruited for the purpose. They were transformative experiences for those who engaged in them, and yet also risky in terms of the threat to their

own legitimacy among the communities that they worked with. At the time, the risk seemed worthwhile. At the grassroots level, the participating public recognised and appreciated the government's unprecedented engagement in a consultation process.

IV. Consultation Task Force: Lost Opportunities for Engagement

After the government's establishment of a Consultation Task Force on Reconciliation Mechanisms (CTF), people engaged in large numbers and made various recommendations—ranging from calls for accountability, to reform of the state, reorganisation of the school system, and alignment of Sri Lanka's education with emerging concerns like climate change and the crisis of employment, as well as greater control of the activities of politicians and state officials.

Members of the government, however, seemed less than willing to recognise the processes and calls for what they were—a potential for institutionalising democracy—and were unable to use them to politically advance certain positive agendas. In my experience with the Task Force, our calls for the government to carry out a media campaign, to first inform the public about what they would be consulted on, received the most perfunctory attention. The Zonal Task Forces that we recruited then had to inform people of the consultations. In my experience, every single consultation required the Zonal Task Forces to first explain to people exactly what it was that the CTF was doing.

The former Foreign Minister, Mangala Samaraweera, was immensely supportive of the entire process and used the right ethical language to talk to both local civil society and the international community about the change that the country seemed to sorely need. However, the government was not politically ready to take this conversation to the public, or to engage in consultations with an ongoing public discussion about the importance and relevance of the project. Therefore, detractors were permitted to control the discourse. Further, the government did not grasp the many opportunities afforded by the consultation process to build a political base for the very processes to which it had explicitly committed. This gap speaks not so much to government hypocrisy or the government's lack of commitment to the process, as some stated during the time, but to the deep political disconnect between the international process that the government committed to and the local context.

V. Public Communication: Global Excellence vs. Local Absence

Internationally, the government has been doing excellently. Arguably, it entered into the UNHRC-mediated process in the belief that it needed to bridge the foreign policy gap that was created by the intransigence of the Rajapaksa regime and reinsert Sri Lanka into the global community. The government was hugely successful in that endeavour. Its credibility at the international level was such that although it has been called to account by key actors of UNHRC, many member governments have been sympathetic to Sri Lanka's predicament.

A charismatic government team led by Minister Samaraweera was cheered in Geneva for a performance in which, according to reports, “every question was handled with tact and honesty.” The government has been repeatedly able to convince the UNHRC that it would need extra time to implement the resolution. At the government-sponsored side event in Geneva in March 2017, Minister Samaraweera argued that the political climate in the country at this time, with the former President Rajapaksa again in ascendancy, was such that the accountability mechanism would be a political stretch; in his words, that it “might be the straw that breaks the camel’s back.”

That argument did not work quite so well in Sri Lanka. The lack of progress has been frustrating to many. There were many months, for example, between various steps involved in establishing the Office of Missing Persons (OMP); from passing the relevant legislation, to gazetting it, establishing the OMP, and appointing its leadership team (the last step was only recently done). The CTF’s report was barely acknowledged by the government. President Sirisena (in)famously absented himself from the ceremony to present the report at the Presidential Secretariat.

During its meetings with the President in 2017, the Task Force was informed that many of the recommendations in its report were not politically feasible. This was the same argument that the government made at the international level. Locally, however, it rang hollow. It was clear that the government was not doing the political work necessary to actually make the reconciliation measures politically feasible at the local level. The fact that the leadership was not willing to take that step and push the political conversation was the real tragedy of the new regime.

At the ground level in the north and east, the report of the CTF was received quite well. The Zonal Task Forces and the participating representatives of affected persons were satisfied with how the CTF represented what was said at the consultations. What made the CTF process into a meaningless exercise for the north and east, however, was the lack of progress on many of the government’s commitments to reconciliation and accountability.

The lack of progress on issues of reconciliation and accountability caused severe distress to the families of affected persons. The evidence of this disappointment and distress were clear. The families of the disappeared protested for months. Protests about delays in releasing land were widespread. As [Dharisha Bastians reported](#) on the government’s performance at the Human Rights Council in March 2017, “If the government is losing the narrative in Sri Lanka where it really counts, what does it matter if it wins the world?”

VI. Detachment from the South

The government’s successful messaging in the UNHRC process in Geneva has not been reflected in communications in the South of the country. Arguably, this failure by the government is mirrored by civil society as well. As members of the CTF, we do not often talk

about how the report was received in the South. It is unclear if members of the CTF are sufficiently aware of how their report was received by people who participated in consultations in the South.

The entire consultation process was imagined as a countrywide process, and unearthed ideas and aspirations regarding a wide variety of urgently needed national changes. However, today that process has been reduced—as a result of the structure of the report, its reception by the state and the media, and the many events that have taken place since the report’s release—to a process that was only about the North and East and only about the four transitional justice mechanisms that the government had committed to in Geneva. This unfortunate perception is despite the CTF’s attempts to consult important stakeholders throughout the country. Therefore, we as civil society are also responsible for reconciliation ultimately being only about “Geneva.”

In the end, both the government and civil society were engaged in a conversation outside of Sri Lanka, about reconciliation in Sri Lanka—which seemed to have little local relevance or resonance. The conversations that began during the consultations (in a miniscule way outside the North and East), about how our institutions had been eroded due to long-term war, how our common humanity needs to be reasserted now that war is no longer our everyday, and how the country needs to be prepared for a difficult future, did not get translated into a public discussion after the release of the report.

The contours of this failure are not limited to the rebuilding of good relations between the war-affected North and East and the rest of the country. This is not only about the discourse of power-sharing. It is not about who was the most affected. It is about the structural preconditions for abuses of power, anti-minority sentiment, and the continuation of the politics of ethnic incitement that remain in place – aspects that are plain to see from recent anti-Muslim violence in the towns of Ampara and Digana.

VII. The Risks of Failure: A Repeated Destiny

The tragedy manifests itself today in many other ways. One is in the re-emergence of the politics of ethnic incitement under the Yahapalanaya regime. In a context where we as citizens of this country do not feel the need to constantly remind ourselves of the horrors of war, do not constantly talk about the destruction that we brought upon ourselves through introducing short-sighted, ethnic-based politics without sufficient attention to what they were spawning, and are not bothered about how our public institutions were destroyed by practices similar to what Human Rights Watch described in the quotes above, we are keeping ourselves open to similar problems emerging once again.

The prevalent conditions for the re-emergence of the anti-Muslim campaign are conceptually and structurally connected to the issues that reconciliation mechanisms are designed to address. If we do not commit to accounting for the set of mistakes related to the ethnic war, we will be

destined to live through the same reality again. It behoves all of us, but especially those who engage in the politics that will make the reconciliation mechanisms possible, to remember that the state dealt with suspected agitators in very similar ways during the JVP insurrection of the late 1980s and in the Tamil militancy that spanned over 30 years.

While the state took certain measures in response to the atrocities of the late 1980s, memories of those times still linger and the affected carry their scars to this day. The absence of a comprehensive justice mechanism to handle state employees who committed crimes during those years helped to legitimise their actions, and ensured the continuity of such practices. That time of fear and uncertainty—sometimes termed *bhishanaya* in Sinhala—informed the consultations that took place outside the North and East. The extent to which it informs those trying to advance the reconciliation process today, however, is unclear.

VIII. Conclusion: Possibilities for Change?

There is some progress—albeit extremely slow—in establishing the four mechanisms to which the government committed itself. The OMP should soon be operational. There are rumours that the outlines, frameworks, and legislation are being drafted for the other mechanisms—especially for the truth commission and reparations framework. If these are indeed established before the 2020 deadline, some level of success can be claimed.

If, however, the mechanisms are to achieve what was intended—relief for those affected by atrocities during the conflict, a transformation in how Sri Lanka’s state institutions function, reestablishment of the rule of law, and greater awareness among the population at large about the suffering of ethnic and religious others—then the political context for that success must be created. There is little evidence that this creation is taking place.

Both the government and civil society actors engaging in human rights work seem to be investing their energies in foreign policy, to the detriment of local engagement, local politics and local narratives of transformation. It is important to evaluate if this approach is the best way to bring about the necessary and most far-reaching changes for the citizens of Sri Lanka.

Notes

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Further Readings

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